

ORIGINAL

WILLKIE FARR & GALLAGHER

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036-3384

202 328 8000
Fax: 202 887 8979

July 13, 1999

EX PARTE

EX PARTE OR LATE FILED

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals, 445 Twelfth Street, S.W.
Washington, D.C. 20554


Re: Ex Parte Filing, CC Docket No. 96-115

Dear Ms. Salas:

Attached is a letter from the Association of Directory Publishers to William J. Bailey, Legal Advisor to Commissioner Harold Furchtgott-Roth, concerning the Commission's authority to order interim relief in conjunction with a formal complaint brought by an independent directory publisher concerning an incumbent local exchange carrier's rates for subscriber list information pursuant to Section 222(e) of the Telecommunications Act of 1996.

Pursuant to the Commission's rules, an original and one copy of this letter are being filed. Please call me at (202) 429-4730 if you have any questions regarding this filing.

Sincerely,



Sophie J. Keefer

cc: Dorothy Attwood
William J. Bailey
Kyle D. Dixon
William A. Kehoe III
Linda Kinney
Daniel R. Shiman
Lawrence E. Strickling
Sarah Whitesell

No. of Copies rec'd. 012
List ABCDE

WILLKIE FARR & GALLAGHER

ORIGINAL

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036-3384

202 328 8000
Fax: 202 887 8979

EX PARTE OR LATE FILED

July 13, 1999

William J. Bailey, Esq.
Legal Advisor
Office of Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RECEIVED

JUL 13 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Filing, CC Docket No. 96-115

Dear Bill:

Please find below the information you requested from the Association of Directory Publishers ("ADP") regarding the Commission's authority to order interim relief in conjunction with a complaint concerning an incumbent local exchange carrier's ("ILEC") rates for subscriber list information ("SLI") brought by an independent directory publisher pursuant to Section 222(e) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act").

Under Section 4(i) of the Act, the Commission has authority to "issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions."¹ This grant of authority includes the ability to order interim relief.² Thus, in order to enforce Section 222(e), the Commission may order interim relief.

In formal complaint proceedings brought pursuant to Section 208 of the Act, the Commission has concluded that it is "appropriate to consider requests for interim or injunctive relief on a case-by-case basis."³ In evaluating such requests, the Commission will generally consider four criteria: (i) the likelihood of success on the merits; (ii) the threat of irreparable harm absent the grant of preliminary

¹ 47 U.S.C. § 154(i).

² See United States v. Southwestern Cable Co., 392 U.S. 157, 180 (1968).

³ In Re Amendment of Rules Governing Procedures to be Followed When Formal Complaints Are Filed Against Common Carriers, Report and Order, 12 FCC Rcd. 22467, 22571 (1997).

Washington, DC
New York
Paris
London

William J. Bailey, Esq.

July 13, 1999

Page 2

relief; (iii) the degree of injury to other parties if relief is granted; and (iv) that the issuance of the order will further the public interest.⁴

If the Commission adopts presumptively reasonable benchmark prices for the provision of SLI, it would be appropriate, as part of a streamlined complaint procedure, to order that the publisher may pay the benchmark price while the complaint is pending.⁵ First, if the Commission establishes a presumptively reasonable rate, the likelihood of success on the merits of a publisher's complaint will be high if an ILEC chooses to charge a higher rate. Second, if publishers are prevented from purchasing SLI because the ILEC's price exceeds the presumptively reasonable benchmark, their directories will be less accurate and up-to-date than the ILEC's affiliate's directory. Independent publishers will be irreparably harmed by the resulting loss of customers and goodwill. Third, the degree of injury to the ILEC is not likely to be great because if a higher price is found to be appropriate, the publisher will pay the difference between that price and the benchmark. Finally, such relief will serve the public interest because it will promote competition in the directory publishing market, the central goal of Congress in enacting Section 222(e).

Although the Commission could decide to evaluate requests for interim relief by individual publishers if and when a complaint is filed, it would be more efficient and consistent with Congress' intent in enacting Section 222(e) to specify in the order implementing this Section that the interim relief described above will be routinely granted.

Should you have any questions or require additional information, please feel free to contact me at (202) 429-4730.

Sincerely,



Sophie J. Keefer

⁴ AT&T Corp. v. Ameritech Corp. and Qwest Comm. Corp., *Memorandum Opinion and Order*, 13 FCC Rcd. 14508, 14514 (1998) (ordering interim relief in the form of a "standstill order" to enjoin Ameritech from enrolling additional customers under its "teaming" agreement with Qwest). The four criteria were originally set forth in Virginia Petroleum Jobbers Assoc. v. FPC, 259 F.2d 921 (D.C. Cir. 1958).

⁵ Such a procedure was suggested in ADP's *ex parte* filing of March 30, 1999.